



**SDMS Doc ID 2037645**

## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

## REGION IX

IN THE MATTER OF:	)	EPA DOCKET NUMBER 2004-05
RICHMOND TOWNHOUSES	)	
APARTMENTS SUPERFUND SITE	)	
	)	AGREEMENT
	)	AND COVENANT NOT TO SUE
	)	CARLSON BOULEVARD, L.P.;
UNDER THE AUTHORITY OF THE	)	COMMUNITY HOUSING
COMPREHENSIVE ENVIRONMENTAL	)	DEVELOPMENT CORPORATION
RESPONSE, COMPENSATION, AND	)	OF NORTH RICHMOND;
LIABILITY ACT OF 1980, 42 U.S.C.	)	DEVINE & GONG, INC.; AND
§ 9601, <u>et seq.</u> , as amended.	)	THE JOHN STEWART COMPANY

I. INTRODUCTION

This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States on behalf of the Environmental Protection Agency ("EPA") and Carlson Boulevard, L.P., a California limited partnership; Community Housing Development Corporation of North Richmond, a California nonprofit public benefit corporation; Devine & Gong, Inc., a California corporation; and The John Stewart Company, a California corporation (collectively the "Parties"). The Settling Respondents that are general partners of Carlson Boulevard, L.P., enter into this Agreement solely in their capacity as general partners of Carlson Boulevard, L.P., and not in an independent capacity or with regard to any other potential basis for liability.

This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, et seq. and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

This Agreement concerns the Richmond Townhouses Apartments Superfund Site ("Site") located in Richmond, California. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). The Site was owned by the Pullman Company from 1909 to 1959. The Pullman Company constructed, sandblasted and painted rail cars at the Site. Rail car maintenance included the use of lead-based filler material to repair dents and sandblasting paints which, during this historical period, commonly contained lead. The Site was sold by the Pullman Company to Parr Industrial Corporation in 1960. In December 1971, Richmond Townhouses Associates California, Ltd. purchased the Site from Parr Industrial Corporation. In August 1982, Richmond Townhouses Apartments, Ltd. ("RTA"), the current owner of the Site, acquired the Richmond Townhouses Apartments from Richmond Townhouses Associates California, Ltd. Carlson Boulevard, L.P., a California limited partnership, is under contract to purchase the Site from RTA.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VII, VIII, IX, and X, the potential liability of the Settling Respondents for the Existing Contamination at the Property which might otherwise result from Settling Respondents becoming the owner of the Property.

The Parties agree that the Settling Respondents' entry into this Agreement, and the actions undertaken by the Settling Respondents in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondents.

The resolution of this potential liability, in exchange for provision by the Settling Respondents to EPA of a substantial benefit, is in the public interest.

## II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

1. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

2. "Existing Contamination" shall mean any hazardous substances, pollutants, or contaminants, present or existing on or under the Site as of the effective date of this Agreement.

3. "Institutional Controls" shall mean the obligations set forth in the Covenant to Restrict Use of Property, which is attached hereto as Exhibit A.

4. "Parties" shall mean the United States on behalf of EPA, and the Settling Respondents.

5. "Property" shall mean that portion of the Site, encompassing approximately 10 acres, which is described in Exhibit B of this Agreement.

6. "Settling Respondents" shall mean Carlson Boulevard, L.P., a California limited partnership (Carlson); Community Housing Development Corporation of North Richmond, a California nonprofit public benefit corporation; Devine & Gong, Inc., a California corporation; and The John Stewart Company, a California corporation. Community Housing Development Corporation, Devine & Gong, Inc., and The John Stewart Company are the general partners of Carlson Boulevard, L.P.

7. "Site" shall mean the Richmond Townhouses Apartments Superfund Site encompassing approximately 10 acres, located at 2989 Pullman Avenue in Richmond, Contra Costa County, California, and depicted generally on the map attached as Exhibit C. The Site

shall include the Property, and all areas to which hazardous substances and/or pollutants or contaminants have come to be located.

8. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

### III. STATEMENT OF FACTS

9. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook a response action at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. The response action addressed soils contaminated with lead at the Site. During the course of this response action, EPA incurred response costs at or in connection with the Site.

10. The Settling Respondents represent, and for the purposes of this Agreement EPA relies on those representations, that Settling Respondents have had no involvement with the Property or the Site. As part of the consideration for this Agreement, Settling Respondents have entered into a Prospective Purchaser Agreement with the California DTSC undertaking obligations, including certain continuing obligations, with respect to the ongoing inspection, maintenance, and improvement of the cap at the Property. Additionally, the Settling Respondents acknowledge that they are aware of and have reviewed the California DTSC's Covenant to Restrict Use of Property, attached as Exhibit A. Settling Respondents, upon acquiring ownership of the Property, shall comply with this Covenant.

### IV. PAYMENT

11. In consideration of and in exchange for the United States' Covenant Not to Sue in Section VIII herein, Settling Respondents agree to pay to EPA the sum of \$100,000 within thirty days of the effective date of this Agreement. Settling Respondents shall make all payments

required by this Agreement in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," referencing the EPA Region, EPA Docket number 2004-05, and Site/Spill ID#09-FV and name and address of Settling Respondent. Payment shall be sent to:

EPA - Cincinnati Accounting Operations  
Attention: Region 9 Receivables  
P.O. Box 371099M  
Pittsburgh, PA 15251

Notice of payment shall be sent to those persons listed in Section XV (Notices and Submissions) and to:

Marie Ortesi  
Financial Management Specialist (PMD-6)  
U.S. EPA Region IX  
75 Hawthorne Street, San Francisco, CA 94105

Connie Ely  
U.S. EPA Facilities - Mail Code NWD  
26 West Martin Luther King Drive  
Cincinnati, Ohio 45268

Section Chief  
Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
DOJ Ref: 90-11-3-08061

12. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

#### V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

13. Commencing upon the date that Carlson Boulevard, L.P. acquires title to the Property, Settling Respondents agree to provide to EPA, the California DTSC, and their authorized officers, employees, representatives, and all other persons performing response actions under EPA or DTSC

oversight, an irrevocable right of access at all reasonable times to the Property for the implementation of response actions at the Site, for the purposes of performing and overseeing response actions at the Site under federal and state law. EPA agrees to provide reasonable notice to Settling Respondents of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et. seq., ("RCRA") and any other applicable statute or regulation, including any amendments thereto.

14. The Settling Respondents shall ensure that assignees, successors in interest, lessees, and sublessees of the Property shall provide the same access and cooperation including the maintenance of any Institutional Controls, provided that access to tenants' units shall be subject to applicable lease provisions regarding the landlord's access rights. The Settling Respondents shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement except that this requirement of providing a copy of the Agreement to any current lessee or sublessee on the Property shall not apply to individual tenants of units in the apartment building. Further, Settling Respondents shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, and Section XI (Parties Bound/Transfer of Covenant), of the Agreement.

#### VI. DUE CARE/COOPERATION

15. The Settling Respondents shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State of California, and federal laws and regulations. The Settling Respondents recognize that the implementation of response

actions at the Site may interfere with the Settling Respondents' use of the Property, and may require closure of its operations or a part thereof. The Settling Respondents agree to cooperate fully with EPA in the implementation of response actions at the Site and further agree not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondents' operations by such entry and response. In the event the Settling Respondents become aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA of such release or threatened release.

## VII. CERTIFICATION

16. By entering into this Agreement, the Settling Respondents certify that to the best of their knowledge and belief they have fully and accurately disclosed to EPA all information known to Settling Respondents and all information in the possession or control of their officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to their qualification for this Agreement. The Settling Respondents also certify that to the best of their knowledge and belief they have not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States



determines that information provided by Settling Respondents is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

#### VIII. UNITED STATES' COVENANT NOT TO SUE

17. Subject to the Reservation of Rights in Section IX of this Agreement, upon payment of the amount specified in Section IV (Payment), of this Agreement, the United States covenants not to sue or take any other civil or administrative action against Settling Respondents for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), with respect to the Existing Contamination, or for past response costs incurred by the United States at the Site.

#### IX. RESERVATION OF RIGHTS

18. The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII (United States' Covenant Not to Sue). The United States reserves and the Agreement is without prejudice to all rights against Settling Respondents with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by Settling Respondents to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V (Access/Notice to Successors in Interest), Section VI (Due Care/Cooperation), and Section XIV (Payment of Costs);

(b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site, caused or contributed to by Settling Respondents, their successors, assignees, lessees or sublessees;

(c) any liability resulting from exacerbation by Settling Respondents, their successors,

assignees, lessees or sublessees, of Existing Contamination;

(d) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

(e) criminal liability;

(f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA;

(g) liability for violations of local, State or federal law or regulations; and

(h) liability for failure to maintain institutional controls as set forth in the Covenant to Restrict Use of Property (see Exhibit A).

19. With respect to any claim or cause of action asserted by the United States, the Settling Respondents shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

20. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

21. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondents to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Settling Respondents acknowledge that they are

purchasing Property where response actions may be required.

#### X. SETTLING RESPONDENTS' COVENANT NOT TO SUE

22. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement, the Settling Respondents hereby covenant not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

23. The Settling Respondents reserve, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondents' plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

#### XI. PARTIES BOUND/TRANSFER OF COVENANT

24. This Agreement shall apply to and be binding upon the United States, and shall apply to and be binding upon the Settling Respondents, their officers, directors, and employees. The

United States' Covenant Not to Sue in Section VIII and Contribution Protection in Section XVIII shall apply to Settling Respondents' officers, directors, or employees, to the extent that the alleged liability of the officer, director, or employee is based on its status and in its capacity as an officer, director, or employee of Settling Respondents, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Respondents. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

25. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondents under this Agreement may be assigned or transferred to any person with the prior written consent of EPA in its sole discretion.

26. The Settling Respondents agree to pay the reasonable costs incurred by EPA to review any subsequent requests for consent to assign or transfer the benefits conferred by this Agreement.

27. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement, including but not limited to the certification requirement in Section VII of this Agreement, in order for the Covenant Not to Sue in Section VIII to be available to that party. The Covenant Not To Sue in Section VIII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA.

## XII. DISCLAIMER

28. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

## XIII. DOCUMENT RETENTION

29. The Settling Respondents agree to retain and make available to EPA all business and operating records, contracts, Site studies and investigations, and documents relating to operations at the Property related to the Agreement or the environmental conditions of the Property, for at least ten years, following the effective date of this Agreement, unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Respondents shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

## XIV. PAYMENT OF COSTS

30. If the Settling Respondents fail to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Payment), of this Agreement, they shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

## XV. NOTICES AND SUBMISSIONS

31. Notices and submissions to EPA required by this Agreement and Certification shall be sent to:

As to EPA:

Janet Magnuson, Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region IX  
Office of Regional Counsel, ORC-3

75 Hawthorne Street  
San Francisco, California 94105

Notices and submissions to Settling Respondents required by this Agreement shall be sent to:

As to Settling Respondents:

Carlson Boulevard, L.P.  
c/o The John Stewart Company  
Attn: Mr. Jack D. Gardner  
President and CEO  
1388 Sutter Street, 11<sup>th</sup> Floor  
San Francisco, CA 94109

**XVI. EFFECTIVE DATE**

32. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Respondents that EPA has fully executed the Agreement after review of and response to any public comments received.

**XVII. TERMINATION**

33. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s).

**XVIII. CONTRIBUTION PROTECTION**

34. With regard to claims for contribution against Settling Respondents, the Parties hereto agree that the Settling Respondents are entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this

Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Site with respect to the Existing Contamination.

35. The Settling Respondents agree that with respect to any suit or claim for contribution brought by them for matters related to this Agreement they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

36. The Settling Respondents also agree that with respect to any suit or claim for contribution brought against them for matters related to this Agreement they will notify in writing the United States within 10 days of service of the complaint on them.

#### **XIX. EXHIBITS**

37. Exhibit A shall mean the Covenant to Restrict Use of Property.

38. Exhibit B shall mean the description of the Property which is the subject of this Agreement.

39. Exhibit C shall mean the map depicting the Site.

#### **XX. PUBLIC COMMENT**

40. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IN THE MATTER OF:  
RICHMOND TOWNHOUSES  
APARTMENTS SUPERFUND SITE

EPA DOCKET NUMBER 2004-05

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

Keith Takata  
Keith Takata, Director  
Superfund Division  
EPA Region IX

NOV 2 2003  
Date



IN THE MATTER OF:  
RICHMOND TOWNHOUSES  
APARTMENTS SUPERFUND SITE

EPA DOCKET NUMBER 2004-05

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

Kelly A. Sansonetti  
Thomas L. Sansonetti  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

11/21/03  
Date

IN THE MATTER OF:  
RICHMOND TOWNHOUSES  
APARTMENTS SUPERFUND SITE

EPA DOCKET NUMBER 2004-05

IT IS SO AGREED:


SETTLING RESPONDENTS:

CARLSON BOULEVARD, L.P., a California limited partnership

By: COMMUNITY HOUSING DEVELOPMENT CORPORATION OF NORTH RICHMOND,

a California nonprofit public benefit corporation

Its General Partner

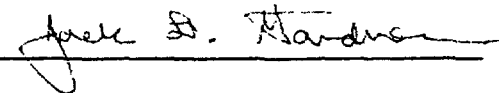
By: 

Name: DAMORE WILLIAMS

Its: DEPUTY DIRECTOR

By: THE JOHN STEWART COMPANY, a California corporation

Its General Partner

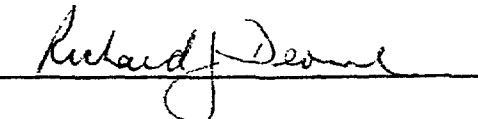
By: 

Name: Jack Gardner

Its: President and CEO

By: DEVINE & GONG, INC., a California corporation

Its General Partner

By: 

Name: Richard J. Devine

Its: President